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17 Attorneys for Defendant

18 AT&T Mobility LLC

19 **UNITED STATES DISTRICT COURT**

20 **NORTHERN DISTRICT OF CALIFORNIA**

21 **SAN JOSE DIVISION**

22 In Re Apple & AT&TM

23 Antitrust Litigation

24 Case No. C 07-05152 JW

25 **DECLARATION OF KYLER E. SMART**  
26 **IN SUPPORT OF DEFENDANT AT&T**  
27 **MOBILITY LLC'S OPPOSITION TO**  
28 **PLAINTIFFS' MOTION FOR CLASS**  
**CERTIFICATION**

Date: May 10, 2010

Time: 9:00 a.m.

Crtrm.: 8

Judge: Honorable James Ware

crowellmoring

1001 Pennsylvania Ave NW  
Washington, DC 20004  
(202) 624-2500

1 I, Kyler E. Smart, declare as follows:

2 1. I am an attorney with the law firm of Crowell & Moring LLP, and I am one of the  
3 attorneys for Defendant AT&T Mobility LLC ("ATTM") in this matter. I submit this declaration  
4 in support of ATTM's Opposition to Plaintiffs' Motion for Class Certification filed on March 16,  
5 2010. If called as a witness, I could and would testify to the facts as stated herein.

6 2. Attached hereto as **Exhibit A** is a true and correct copy of the deposition transcript  
7 of Plaintiffs' expert Simon J. Wilkie, Ph.D., taken in this matter on February 26, 2010.

8 3. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the  
9 deposition transcript of plaintiff Timothy Smith, taken in this matter on October 17, 2009, in  
10 addition to Exhibit 3 marked in the deposition. A full copy of the deposition transcript is attached  
11 to the Declaration of Sadik Huseny In Support of Apple Inc.'s Opposition to Plaintiffs' Motion for  
12 Class Certification ("Huseny Decl.") Ex. H.

13 4. Attached hereto as **Exhibit C** is a true and correct copy of excerpts from the  
14 deposition transcript of plaintiff Michael Lee, taken in this matter on October 22, 2009, in addition  
15 to Exhibits 8, 11, and 20 (excerpts) marked in the deposition. A full copy of the deposition  
16 transcript is attached to the Huseny Decl. Ex. C.

17 5. Attached hereto as **Exhibit D** is a true and correct copy of excerpts from the  
18 deposition transcript of plaintiff Paul Holman, taken in this matter on October 15, 2009. A full  
19 copy of the deposition transcript is attached to the Huseny Decl. Ex. A.

20 6. Attached hereto as **Exhibit E** is a true and correct copy of excerpts from  
21 APPLE\_IPHONE\_0279548-78, a transcript of the 2007 MacWorld Tradeshow and Conference,  
22 which was produced by Apple in this litigation.

23 7. Attached hereto as **Exhibit F** is a true and correct copy of excerpts from  
24 APPLE\_IPHONE\_0279542-43, the Jan. 9, 2007 Apple-Cingular joint press release, which was  
25 produced by Apple in this litigation.

26 8. Attached hereto as **Exhibit G** is a true and correct copy of excerpts from the  
27 deposition transcript of plaintiff Dennis Macasaddu, taken in this matter on October 19, 2009, in  
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1 addition to Exhibit 20 (excerpts) marked in the deposition. A full copy of the deposition transcript  
2 is attached to the Huseny Decl. Ex. D.

3 9. Attached hereto as **Exhibit H** is a true and correct copy of excerpts from the  
4 deposition transcript of Jose Pascasio, taken in this matter on December 30, 2009. .

5 10. Attached hereto as **Exhibit I** is a true and correct copy of excerpts from the  
6 deposition transcript of Mitch Farber, taken in this matter on October 28, 2009, in addition to  
7 Exhibits 1, 2, 3, and 6 marked in the deposition.

8 11. Attached hereto as **Exhibit J** is a true and correct copy of ATTM\_09\_0007390, a  
9 pre-purchase understanding document, which was produced by ATTM in this litigation.

10 12. Attached hereto as **Exhibit K** is a true and correct copy of excerpts from  
11 ATTM\_02\_0004514-79, the iPhone Launch Training Participant Guide, which was produced by  
12 ATTM in this litigation.

13 13. Attached hereto as **Exhibit L** is a true and correct copy of ATTM\_17\_0000309-13,  
14 iPhone Talking Points, which was produced by ATTM in this litigation.

15 14. Attached hereto as **Exhibit M** is a true and correct copy of the Complaint for  
16 Treble Damages and Permanent Injunctive Relief, *Smith v. Apple, Inc.*, Case No. 07-CV-095781  
17 (Cal. Super. Ct. Oct. 5, 2007), filed on behalf of plaintiff Timothy Smith in the Superior Court of  
18 California on October 5, 2007.

19 15. Attached hereto as **Exhibit N** is a true and correct copy of ATTM documents bates  
20 labeled ATTM\_22\_0000001-7, screen shots of ATTM customer account records reflecting an  
21 email sent to Denis Macasaddu, which was produced by ATTM in this litigation.

22 16. Attached hereto as **Exhibit O** is a true and correct copy of the AT&T webpage  
23 entitled "AT&T Returns Policy – Wireless from AT&T."

24 17. Attached hereto as **Exhibit P** is a true and correct copy of ATTM\_21\_0000153, a  
25 counter card, which was produced by ATTM in this litigation.

26 18. Attached hereto as **Exhibit Q** is a true and correct copy of excerpts from the  
27 deposition transcript of plaintiff Herbert Kliegerman, taken in this matter on October 21, 2009, in  
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1 addition to Exhibit 13 marked in the deposition. A full copy of the deposition transcript is  
 2 attached to the Huseny Decl. Ex. B.

3 19. Attached hereto as **Exhibit R** is a true and correct copy of excerpts from the  
 4 deposition transcript of plaintiff Scott Sesso, taken in this matter on October 14, 2009. A full copy  
 5 of the deposition transcript is attached to the Huseny Decl. Ex. G.

6 20. Attached hereto as **Exhibit S** is a true and correct copy of excerpts from the  
 7 deposition transcript of plaintiff Mark Morikawa, taken on October 18, 2009. A full copy of the  
 8 deposition transcript is attached to the Huseny Decl. Ex. E.

9 21. Attached hereto as **Exhibit T** is a true and correct copy of excerpts from the  
 10 deposition transcript of plaintiff Lucy Rivello, taken in this matter on October 16, 2009. A full  
 11 copy of the deposition transcript is attached to the Huseny Decl. Ex. F.

12 22. Attached hereto as **Exhibit U** is a true and correct copy of Plaintiff Paul Holman's  
 13 Responses and Objections to Defendant AT&T Mobility LLC's Second Set of Interrogatories.

14  
 15 I declare under penalty of perjury that the foregoing is true and correct. Executed this 16<sup>th</sup>  
 16 day of March, 2010 at Washington, D.C.

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 18 /s/ Kyler E. Smart  
 19 Kyler E. Smart  
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